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LERNER AND GREENBERG, P.A.
PATENT ATTORNEYS AND ATTORNEYS AT LAW
Post Office Box 2480
Hollywood, FL 33022-2480

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APR 13 2004

In re Application of :
Jorg Schepers :
Application No. 10/017,639 :
Filed: November 21, 2001 :
Attorney Docket No. 1999P1897 :

OFFICE OF PETITIONS

DECISION GRANTING
PETITION

This is a decision on the "PETITION UNDER 37 C.F.R. 1.10(c)," filed February 26, 2002, requesting that the above-identified application be accorded a filing date of November 21, 2001, rather than the presently accorded filing date of December 18, 2001. The petition was recently forwarded to the undersigned for consideration.

Petitioner maintains that on November 21, 2001, the application was deposited as "Express Mail" in the U.S. Postal Service. In support thereof, applicant submits the following documents:

- a photocopy of the cover letter transmitting the application papers under cover of Express Mail and noting thereon the Express Mail mailing label No. "EL758653362US";
- the official United States Postal Service (USPS) Track and Confirm record for the relevant Express Mail mailing;
- an itemized return postcard receipt, bearing the Express Mail mailing label number, but with a date stamp of receipt by the Office of December 18, 2001 and no notation of non-receipt of any item listed; and
- a declaration by Michael J. Burns of first-hand knowledge that the application was sent by "Express Mail" to the Office on November 21, 2001.

The instant petition was filed promptly within the meaning of § 1.10(c)(1). The cover letter to some extent itemizes¹ the papers received in the Office in the Express Mail mailing and more importantly, was in fact received with the application papers. Thus, petitioner has shown that the "Express Mail"

¹ Under the circumstances of this case, the evidence is persuasive that all of the application papers were received with the cover letter. However, it is suggested that either the Express Mail mailing label number be placed on each piece of correspondence (e.g. the specification, the drawings, etc.,) or that the accompanying transmittal, bearing the Express Mail mailing label number, specifically itemize the papers being filed (in the same manner as they are itemized on the return postcard).

papers. Thus, petitioner has shown that the "Express Mail" mailing label number "EL758653362US" was placed on the papers prior to the original mailing.

Petitioner's assertions are corroborated by the USPS Track and Confirm record. The "Delivery Status" submitted notes the relevant "Express Mail" item was accepted at 5:32 pm on November 21, 2001². In this instance, the requirement for a copy of the "Express Mail" mailing label is *sua sponte* waived.

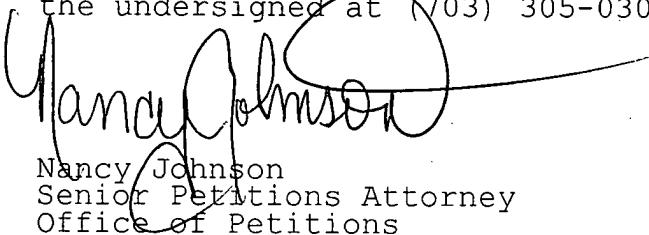
In view thereof, the petition is GRANTED.

It is noted that Office records reveal that the "Express Mail" mailing received December 18, 2001 contained 6 applications. **Petitioner is advised that it is not recommended that separate applications be submitted in the same mailing. See 37 CFR 1.4.** Under certain circumstances, doing so may preclude applicant from being able to later show that an application possibly misplaced by the Office was among the applications present in the "Express Mail" mailing. Further, doing so may result in multiple applications, or papers from different applications, being entered in a single application Image File Wrapper.

No petition fee is required.

The Office of Initial Patent Examination (OIPE) has been directed, pursuant to this decision, to correct the filing date to November 21, 2001.

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0309.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

² It is noted that during this period there was a disruption in Express Mail service to the United States Patent and Trademark Office (USPTO) at the Washington DC address; however, the USPS record supports a conclusion that the USPS nonetheless accepted the instant mailing. *Suspension of the "Express Mail" Service of United States Postal Service for mail addressed to ZIP Codes 202xx through 205xx, 1254 OG 33 (January 1, 2002)*.